which is a public duty only or whether they were intended, in addition to the public duty, to impose a duty enforceable by an individual aggrieved. I have come to the conclusion that the duty they were intended to impose was not a duty enforceable by individuals injured, but a public duty only, the sole remedy for which is the remedy provided by way of a fine. They impose obligations of various kinds, some are concerned more with the maintenance of the highway than with the safety of passengers; and they are of varying degrees of importance; yet for breach of any regulation a fine not exceeding 10 *l.* is the penalty. It is not likely that the Legislature, in empowering a department to make regulations for the use and construction of motor cars, permitted the department to impose new duties in favour of individuals and new causes of action for breach of them in addition to the obligations already well provided for and regulated by the common law of those who bring vehicles upon highways. In particular it is not likely that the legislature intended by these means to impose on the owners of vehicles an absolute obligation to have them roadworthy in all events even in the absence of negligence."

In reference to this English case Mr. Murphy, as I understood him, suggested that our Road Traffic Ordinance, 1958, is a wider legislation than the English "Locomotives on Highways Act, 1896", and in support he referred me to the preamble of our Ordinance and in particular to the words in the preamble "provision for the protection of third parties against risks arising out of the use of motor vehicles". In my view, in reference to these words, they were intended merely to refer to the Motor Vehicles (Third Party Risks) Rules, 1959, made under the Ordinance.

At the hearing of this case I was also cited several other cases, for example, *Monk* v. *Warbey and Others,*[2] *London Passenger Transport Board* v. *Upson and Another* [3] and *Tan Siew Ting & Ors.* v. *Chong See Jin.*[4] I do not think that it is necessary for me to refer to these cases as I think that for the purpose of this case the judgment of Atkin L.J. (which I have quoted) would be sufficient guidance for me.

Having regard to the provisions of our Motor Vehicles (Construction and Use) Rules, 1959, I do not think that these regulations were intended to impose on the owners of vehicles an absolute obligation to have them roadworthy in all events even in the absence of negligence. I would, therefore, say that the plaintiffs' claims on this question must fail.

I would, therefore, dismiss the suits with costs.

Claims dismissed.

Solicitors: *Murphy & Dunbar; Hilborne & Co.*

PUBLIC INSURANCE CO. LTD. v. MUTHU

[O.C.J. (Abdul Aziz J.) June 17, 1965]

[K.L. — Civil Suit No. 657 of 1961]

Insurance — Motor insurance — Payment of damages by insurance company to injured party — Repudiation of liability by insurance company after payment of damages — Breach of conditions of insurance policy — Recovery of damages paid — Road Traffic Ordinance, 1958, s. 80(1).

The plaintiffs, an insurance company, brought an action to recover damages which had been paid by them to a party injured in a motor accident involving a motor vehicle insured with them. The plaintiffs alleged that they were entitled to repudiate liability on the ground that the insured had failed to comply with the conditions in the insurance policy requiring him (a) to give notice in writing of the occurrence of any accident or loss or damage or in the event of any claim and (b) to give notice in writing if the insured has knowledge of any impending prosecution in respect of any occurrence which may give rise to a claim under the policy.

Held: (1) the insured in this case had given notice in writing to the plaintiffs of the accident but failed to give notice of the impending prosecution;

(2) the insured had not proved that there had been any waiver by conduct on the part of the plaintiffs in respect of the non-disclosure of the impending prosecution and therefore as there had been a breach of the conditions of the insurance policy, the plaintiffs could rightly repudiate liability and recover the amount paid by them.

CIVIL SUIT.

N. A. Marjoribanks for the plaintiffs.

K. A. Menon for the defendant.

Cur. Adv. Vult.

Abdul Aziz J.: This is probably the first case of its kind in this country where an insurance company having paid out damages to a party injured in a motor accident subsequently repudiated liability on account of a breach of the conditions in the insurance policy, such condition being usually contained in the small prints of the policy.

The plaintiffs' claim is that the insured has failed to comply with certain conditions contained in clause 1 of the conditions of the policy which reads:

"Notice shall be given in writing to the company immediately upon the occurrence of any accident or loss or damage or in the event of any claim. .....Notice shall also be given in writing to the company immediately the insured shall have knowledge of any impending prosecution in respect of any occurrence which may give rise to a claim under this policy....."

Under the compendious 'condition precedent' clause the due observance and fulfilment of the terms and conditions of a policy is a condition precedent to liability on the part of the company, and the position is not affected by the fact that damages have already been paid to the injured party under the policy. The right to recover is inherent in the terms.

It was alleged (a) that the defendant failed to notify the plaintiffs that one Haji Mohamed

Noor was injured in the traffic accident which occurred on 21st September, 1956, (b) that the defendant failed to notify the plaintiffs that V. Kannan, driver of the insured car, had received a summons for negligent driving, and (c) the defendant failed to notify the plaintiffs that the case against the said V. Kannan was fixed for hearing on 19th February, 1957. They further averred that by reason of the failure abovementioned they were unable to enquire into the loss and to take other steps necessary to defend the action.

The defendant's case was that he did inform the plaintiffs' clerk of the accident and since the clerk was the agent of the plaintiffs the knowledge of the clerk must necessarily be imputed to the principals. The defendant, however, admits that he failed to notify plaintiffs of the impending prosecution but contends that the plaintiffs by their subsequent conduct have waived such breach.

It is common ground that the car insured by the plaintiffs was involved in a traffic accident on 21st September, 1956, and on 24th September, 1956, the defendant and his driver, V. Kannan, went to the office of the plaintiffs to report the accident. As the defendant could not read or write English the plaintiffs' clerk filled up the claim form which was signed by him. Under the column "particulars of accident" the following particulars were given:

"On the evening of 21st September, 1956, I was driving car BC. 7476 at Bukit Bintang Road; wanted to turn in Jalan Delima; a policeman in the middle of the road stop my car because of the Mentri Besar car was coming; when the Mentri Besar's car passed I turned into Jalan Delima, and a motor-cycle came from opposite direction and knocked my car."

In the "person injured" column there was an endorsement "nil", but in the "witnesses" column there was written "High Street Police Station report No. 15417/56". The column "other vehicle or property damaged" was left blank. Subsequently, Kannan the driver was served with a summons for negligent driving and on 19th February, 1957, he was tried and convicted in a magistrate's court and was fined $30. Subsequent to the criminal prosecution a claim was made against the defendant by the injured party for damages for injuries and the defendant was adjudged to pay $9,408.05 and costs which amount was paid by the plaintiffs as they were obliged to do under the provisions of section 80(1) of the Road Traffic Ordinance.

There are two issues in this case. Firstly, whether notice in writing was given to the plaintiffs of the accident or loss or damage. Secondly, whether the defendant has discharged the onus of proving that by the subsequent conduct of the plaintiffs the latter have waived the breach of the defendant in failing to notify the plaintiffs of the impending prosecution. On the first point it will not be necessary for me to decide whether the clerk at the time when he made out the claim form was the agent of the plaintiffs or the defendant. Clause 1 requires that notice be given in writing. Even if it were true that the defendant or his driver did inform the clerk orally that somebody was injured in the accident, that would not be sufficient for purposes of clause 1 of the conditions. For the purposes of this clause the claim form will therefore be treated as notice in writing to the plaintiffs. A perusal of the claim form shows that the defendant had notified the plaintiffs that an accident had occurred between his car and a motor-cycle. The defendant had also notified the plaintiffs that a report had been lodged and if the plaintiffs had examined the report it would be apparent that a motor-cyclist was severely injured. Clause 1 does not require that the defendant give full particulars of the accident or the loss or damage. It is sufficient if he gives sufficient particulars within his knowledge to indicate that an accident has occurred and that loss or damage must have been the likely result. This the defendant has already done.

The second ground raised by the defence was that there was a waiver on the part of the plaintiffs by their subsequent conduct. The basis for this, they say, is the letter on page 12 of the agreed documents dated 21st July, 1958. In that letter the solicitors for the plaintiffs gave notice of intended repudiation of liability on one ground only, namely, the failure on the part of the defendant to notify the plaintiffs whether any person was injured. The failure to inform the plaintiffs of the impending prosecution was not set out as a ground for repudiation. On the question of waiver, *Halsbury*, 3rd Edn. Vol. 22, page 228, states as follows:

"If what is relied on as a waiver is conduct after breach has occurred the conduct must be such as to indicate an intention to treat the contract as still subsisting."

The burden of proof to show waiver is on the defendant and it is a strict one. I can find nothing in the contents of the letter of 21st July, 1958, or the conduct of the plaintiffs to show that after the breach the plaintiffs have an intention to treat the contract as still subsisting between the parties. The defendant has not discharged his burden of proof in this respect.

The failure to inform the plaintiffs of the impending prosecution is clearly a breach of clause 1 of the conditions. The insurance company can rightly repudiate liability and recover the amount that they were obliged to pay by virtue of the Road Traffic Ordinance.

There will accordingly be judgment for the plaintiffs for $9,408.05 which is the amount that

the plaintiffs have already paid to the injured person, with interest and costs.

Judgment for the plaintiffs.

Solicitors: *Lovelace & Hastings; Braddell & Ramani.*

LIM KO & ANOR. v. BOARD OF ARCHITECTS

[A.C.J. (Abdul Aziz J.) June 17, 1965]

[K.L. — Originating Motion No. 48 of 1963]

Architects — Disciplinary proceedings — "Unprofessional conduct" — Matter for board to decide — Delegation of powers to disciplinary committee to conduct enquiry — Board acting on report of disciplinary committee — Removal of names from register of architects — Natural justice — Appeal against order of board — Architects Ordinance, 1951, ss. 9 and 16.

The board of architects appointed a disciplinary committee to conduct an inquiry and to hear witnesses and take evidence in connection with allegations of "unprofessional conduct" against the appellants. Subsequently after receiving the report of the committee the board found that the appellants had been guilty of acts of "unprofessional conduct" within the provisions of section 9(1)(b) of the Architects Ordinance in that the first appellant had signed plans not prepared by him and the second appellant had permitted the submission of these plans in his name for the approval of the Ipoh Town Council. The board accordingly removed the names of the appellants from the register of architects. On appeal the grounds upon which the appeal were based were that (i) the board had failed to hold inquiry under section 9(1) of the Architects Ordinance; (ii) the board had acted outside the scope of their authority in delegating its powers to the committee; (iii) the appellants were never allowed to know the specific allegations that were laid against them and in the result they were seriously prejudiced in the preparation of their defence; (iv) the board had come to a decision adverse to the interests of the appellants even before they were given an opportunity to present their case; (v) the appellants were denied a fair opportunity of stating their case and being heard in their defence; and (vi) the board in the whole conduct of the proceedings had acted contrary to the rules of natural justice.

Held: (1) it is not for the court to say whether any particular act or conduct is infamous in any professional respect. The statute has appointed the board as the custodian of professional ethics and etiquette of the architectural profession and it is for them to say whether on the facts any registered architect is guilty of infamous conduct; and a review of the decision of the board must be limited to a consideration, apart from the question of natural justice, whether there is some evidence which could reasonably support the decision of the board;

(2) there can be no objection to the method of inquiry adopted by the board in this case as the inquiry committee was not given any power to make any adjudication and the power to do so was retained by the board;

(3) in this case the appellants had ample opportunity to present their case to the board and therefore the requirements of natural justice in this respect had been complied with;

(4) whether or not there has been a breach of the rules of natural justice by reason that a domestic tribunal has taken into consideration an undisclosed document in coming to its conclusion would depend on the document itself and the probable damage arising from its disclosure and in this case the board was justified in not disclosing the report contained in the Town Council file, which was the property of the Town Council.

Cases referred to:—

(1) *Allinson* v. *General Council of Medical Education and Registration* [1894] 1 Q.B. 750.

(2) *Allender* v. *Council of the Royal College of Veterinary Surgeons* [1951] 2 All E.R. 859.

(3) *Hughes* v. *Architects Registration Council of the United Kingdom* [1957] 2 Q.B. 550.

(4) *Osgood* v. *Nelson* (1872), L.R. 5 H.L. 636.

(5) *University of Ceylon* v. *Fernando* [1960] 1 W.L.R. 223 at page 229; [1960] 1 All E.R. 631.

(6) *Ridge* v. *Baldwin & Others* [1963] 2 All E.R. 67 at page 80.

(7) *Russell* v. *Duke of Norfolk* [1949] 1 All E.R. 109, 118.

(8) *Byrne* v. *Kinematograph Renters Society Ltd.* [1958] 1 W.L.R. 762 at page 784.

(9) *Surinder Singh Kanda* v. *Government of Federation of Malaya* [1962] M.L.J. 169 at p. 172.

(10) *Official Solicitor* v. *K* [1963] 3 All E.R. 191 at p. 205.

ORIGINATING MOTION.

R. R. Chelliah (*H. Sankey* with him) for the appellants.

S. D. K. Peddie for the respondent.

Cur. Adv. Vult.

Abdul Aziz J.: This is an appeal under section 16 of the Architects Ordinance 1951 against the order of the board of architects removing the names of the appellants from the register of architects.

The proceedings before the board commenced with a letter dated 26th October, 1961, from the secretaries, board of architects, to the first appellant (Lim Ko) who is registered under Part I of the register —

(a) stating that the board is given to understand that the dawing submitted to the Ipoh Town Council in respect of a six-storeyed building was in fact signed by the second appellant (Wong Chee Leong);

(b) that the advertisement in the *Straits Times* showed that the plan and tender documents could be obtained from the second appellant; and

(c) informing the first appellant that there will be an enquiry by the board following information laid, and inviting the first appellant to give an explanation.

The first appellant replied on 3rd November, 1961 stating that he designed the plan of the building and signed and submitted it to the Ipoh Town Council for approval, that as he was away from Ipoh at the time he admitted he had "put the plans and tender documents in the second appellant's place." On 29th March, 1961, the secretaries wrote to the first appellant stating —